

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

HONORABLE LARRY ALAN BURNS, JUDGE PRESIDING

UNITED STATES OF AMERICA, )  
 )  
 PLAINTIFF, ) CASE NO. 07CR00329-LAB  
 VS. )  
 ) SAN DIEGO, CALIFORNIA  
 ) NOVEMBER 19, 2007  
 KYLE DUSTIN FOGGO, ) 9:30 A.M.  
 BRENT ROGER WILKES, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

REPORTER'S TRANSCRIPT

STATUS CONFERENCE

APPEARANCES:

FOR THE GOVERNMENT:

KAREN P. HEWITT, U.S. ATTORNEY  
BY: SANJAY BHANDARI, ESQ.  
VALERIE CHU, ESQ.  
JASON A. FORGE, ESQ.  
PHILLIP LB HALPERNS, ESQ.  
ASSISTANT U.S. ATTORNEYS  
880 FRONT STREET  
SAN DIEGO, CA 92101

FOR DEFENDANT WILKES:

FEDERAL DEFENDERS, INC.  
BY: REUBEN CAHN, ESQ.  
SHEREEN CHARLICK, ESQ.  
STEPHEN BARTH, ESQ.  
225 BROADWAY, STE. 900  
SAN DIEGO, CA 92101

FOR DEFENDANT FOGGO:

AKIN GUMP STRAUSS HAUSER & FELD  
BY: MARK J. MACDOUGALL, ESQ.  
ANDREW J. DOBER, ESQ.  
PAUL BUTLER, ESQ.  
ELIZABETH TOBIO, ESQ.  
1333 NEW HAMPSHIRE AVE., N.W.  
WASHINGTON, DC 20036-1564

1 COURT REPORTER:

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1 SAN DIEGO, CALIFORNIA - MONDAY, NOVEMBER 19, 2007 - 9:30 A.M.

2 THE COURT: CALLING NO. 1 ON THE CALENDAR,  
3 07CR00329, UNITED STATES OF AMERICA VERSUS KYLE DUSTY FOGGO  
4 AND BRENT WILKES ON FOR STATUS CONFERENCE.

5 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR THE  
6 RECORD.

7 MR. BUTLER: PAUL BUTLER, ANDREW DOBER, AND  
8 ELIZABETH TOBIO FOR MR. FOGGO. AND MR. MAC DOUGALL SHOULD BE  
9 HERE ANY MINUTE.

10 MR. CAHN: REUBEN CAHN AND SHEREEN CHARLICK AND  
11 STEPHEN BARTH ON BEHALF OF BRENT WILKES.

12 MR. HALPERN: PHIL HALPERN, JASON FORGE, SANJAY  
13 BHANDARI, AND VALERIE CHU FOR THE GOVERNMENT.

14 THE COURT: GOOD MORNING.

15 OUR COURT SECURITY OFFICER IS ALSO HERE THIS  
16 MORNING.

17 MR. LONDERGAN: GOOD MORNING, JUDGE. JIM  
18 LONDERGAN.

19 THE COURT: MR. MAC DOUGALL JOINED YOU?

20 MR. BUTLER: NOT YET. WE CAN GO FORWARD. PAUL  
21 BUTLER HERE.

22 THE COURT: WHO WANTS TO START?

23 MR. HALPERN: WELL, YOUR HONOR, WE'RE HERE TO GET  
24 DATES. WE SPOKE ORIGINALLY OF THE SECTION 2 CONFERENCE DATE.  
25 I'M NOT SURE THAT'S NECESSARY. I THINK THE MAJOR DATE THAT WE

1 HAVE TO CONFRONT WOULD BE THE DATE FOR THE SECTION 5 NOTICES,  
2 WHICH WOULD HAVE TO BE FILED BY THE DEFENSE IF THEY INTEND TO  
3 DISCLOSE ANY CLASSIFIED INFORMATION. I'M NOT SURE WHETHER  
4 THAT'S GOING TO BE A SINGLE FILING OR MULTIPLE FILINGS.  
5 THAT'S SOMETHING THAT'S ENTIRELY IN THEIR BAILIWICK. I  
6 WOULDN'T WANT TO EVEN SUGGEST WHAT WOULD BE APPROPRIATE IN  
7 THAT REGARD.

8 MR. CAHN: LET ME EXPLAIN OUR --

9 THE COURT: MR. CAHN, GO AHEAD AND HAVE A SEAT AND  
10 HOLD THIS MIKE UP CLOSER. I WANT TO MAKE SURE THESE FOLKS --

11 MR. CAHN: I'M NOT USED TO SPEAKING SITTING DOWN.

12 JUDGE, OUR SITUATION IS DESPITE BEST EFFORTS, WE'VE  
13 YET TO ACTUALLY BEEN ABLE TO VIEW THE CLASSIFIED MATERIAL  
14 BEYOND THAT THAT WE SAW ON OUR TRIP TO WASHINGTON. THE  
15 GOVERNMENT DID ARRANGE FOR DELIVERY OF THE DISCOVERY IN THE  
16 S.C.I.F. IN L.A. THERE WAS A PROBLEM WITH THE PARTICULAR  
17 PIECE OF SOFTWARE THAT'S NEEDED TO VIEW THE IMAGES THAT WE  
18 NEED TO SEE. AND AS A RESULT, IT WAS UNVIEWABLE. THERE'S  
19 ALSO SOME ADDITIONAL PIECES OF SOFTWARE.

20 I'VE JUST SPOKEN WITH SETH HAGEMAN (PHONETIC). IS  
21 THAT THE CORRECT PRONUNCIATION? WE'RE ARRANGING HOPEFULLY FOR  
22 A DELIVERY -- THIS ALL HAS TO BE DONE IN PERSON -- NEXT WEEK  
23 AT THE S.C.I.F IN L.A. I'LL BE THERE TO MEET WHOEVER TRAVELS  
24 WITH THE HARD DRIVE. SO I IMAGINE THAT MR. BUTLER AND  
25 MR. FOGGO'S OTHER LAWYER IS IN A MUCH BETTER POSITION TO TALK

1 ABOUT WHAT'S NEEDED TO GET TO THE SECTION 5 DATE.

2 THE COURT: MR. BUTLER.

3 MR. BUTLER: YES, YOUR HONOR. I THINK WE'RE STILL  
4 SOMEWHAT HANDICAPPED HERE IN PROPOSING A SPECIFIC DATE. WE  
5 HAD A MEETING WITH THE JUSTICE DEPARTMENT TAINING COUNCIL  
6 THAT THE COURT PUT IN PLACE. THAT WAS VERY HELPFUL. THEY  
7 HAVE MADE A PROPOSAL BACK TO US CONCERNING THE GROUND RULES  
8 FOR US CONDUCTING WITNESS INTERVIEWS GOING FORWARD. THAT  
9 LETTER WAS DELIVERED TO THE S.C.I.F THE END OF LAST WEEK. AND  
10 WE'VE GONE UP AND READ IT QUICKLY, BUT WE HAVE NOT HAD S.C.I.F  
11 TIME TO GO IN AND GO OVER THE PROPOSAL AND FORMULATE OUR  
12 RESPONSE TO IT.

13 IN ADDITION, WE HAVE JUST RECENTLY EXCHANGED SOME  
14 CORRESPONDENCE WITH THE GOVERNMENT AND TALKED ABOUT SOME  
15 ADDITIONAL DISCOVERY THAT'S GOING TO BE PROVIDED TO US. SO WE  
16 ARE STILL IN THE POSITION -- AND MR. MAC DOUGALL HAS JUST  
17 JOINED US -- WHERE WE HAVE VERY LIMITED S.C.I.F. TIME. WE ARE  
18 STILL WORKING OUT GETTING ADDITIONAL DOCUMENT DISCOVERY. WE  
19 HAVE NOT YET SOLVED BUT HOPEFULLY WILL HAVE SUBSTANTIALLY  
20 NARROWED THE ISSUE ON WHAT WE CAN AND TALK TO OUR WITNESSES  
21 ABOUT. AND WE HAD HOPED TO RAISE THOSE ISSUES WITH THE COURT  
22 AT THE HEARING IN DECEMBER.

23 THE COURT: WELL, THIS MAY COME AS A SURPRISE TO  
24 THE GOVERNMENT, BUT MR. BUTLER AND MR. MAC DOUGALL, AS YOU  
25 KNOW PROBABLY, MR. WILKES WAS CONVICTED AFTER A JURY TRIAL

1        HERE.  AND THERE IS A MOTION PENDING IN HIS CASE SET FOR  
2        DECEMBER 11TH.  IT'S A MOTION THAT I RESERVED ON THAT WAS  
3        BROUGHT BY BOTH MR. MAC DOUGALL AND MR. GERAGOS TO DISMISS THE  
4        INDICTMENTS.  WE'LL TAKE TESTIMONY IN THAT AND SEE WHERE THAT  
5        LEADS.

6                BUT ONE OF THE THINGS I TOLD MR. GERAGOS AND  
7        MR. WILKES AT THE TIME WAS I THOUGHT THEY'D HAVE THE LABORING  
8        OAR TO SHOW PREJUDICE AND THEREBY JUSTIFY THE REMEDY OF  
9        DISMISSAL.  AS YOU MAY KNOW, THE GOVERNMENT'S RESPONDED -- AND  
10       I DON'T THINK IT'S CONTESTED -- THAT AT SOME POINT AFTER THE  
11       CUNNINGHAM INDICTMENT WAS RETURNED, MR. WILKES IDENTIFIED  
12       HIMSELF AS ONE OF THE ANONYMOUS CO-CONSPIRATORS.  HE CAME OUT  
13       AND VOLUNTARILY SELF-IDENTIFIED AS CO-CONSPIRATOR 1, I THINK.  
14       SO IT'S VERY DIFFICULT UNDER THOSE CIRCUMSTANCES, I THINK, FOR  
15       HIM TO SAY THAT HE WAS PREJUDICED.  BUT I WANT TO WAIT AND SEE  
16       WHERE THAT LEADS.

17               BUT ONE OF THE OTHER THINGS THAT I TOLD MR. WILKES  
18       WAS IT'S ORDINARILY MY PRACTICE, CERTAINLY AFTER A JURY TRIAL  
19       IF A PERSON IS CONVICTED OF A SERIOUS FELONY AND THE BURDEN  
20       SHIFTS UNDER 3143, TO REMAND THAT PERSON TO CUSTODY.  I DIDN'T  
21       DO IT BECAUSE ORDINARILY A MOTION LIKE THE ONE I'VE JUST  
22       SPOKEN OF WOULD HAVE BEEN HANDLED BEFORE THE TIME OF TRIAL,  
23       AND I DIDN'T WANT TO GIVE ANYONE THE IMPRESSION THAT I  
24       PREJUDGED THE OUTCOME OF THAT.  I HAVE NOT.  I WANT TO WAIT  
25       AND HEAR WHAT THE EVIDENCE IS.

1           BUT I DID TELL MR. WILKES THIS: I SAID, "ASSUMING  
2       THAT THE MOTION IS DENIED, YOU SHOULD HAVE YOUR AFFAIRS IN  
3       ORDER AND BE PREPARED TO BEGIN SERVING ANY CUSTODIAL TERM THAT  
4       IS IMPOSED IN JANUARY WHEN YOU'RE SENTENCED." AT THE TIME,  
5       MR. CAHN WAS PRESENT AND MR. GERAGOS, AND THEY WANTED TO SPEAK  
6       TO THAT.

7           BUT HERE IS THE POINT OF MY REVEALING ALL THAT TO  
8       YOU: THAT HAS CAUSED ME TO RECONSIDER THE MOTION THAT WAS  
9       MADE EARLY ON TO TRANSFER THIS CASE TO THE EASTERN DISTRICT OF  
10      VIRGINIA. IF IT TURNS OUT THAT MR. WILKES IS IN CUSTODY AS OF  
11      JANUARY, THEN WE DON'T HAVE A VICINAGE PROBLEM ANYMORE WITH  
12      HIM HAVING A RIGHT TO BE TRIED HERE IN SAN DIEGO.

13          I'VE LOOKED OVER THE INDICTMENT. I'VE LOOKED OVER  
14      THE MOTION AGAIN. IT APPEARS TO ME THAT ALMOST ALL OF THE  
15      OPERATIVE EVENTS IN THE WILKES/FOGGO MATTER OCCURRED IN THE  
16      EASTERN DISTRICT OF VIRGINIA. AS I SAID AT THE TIME, THE  
17      SALIENT FACTOR THAT PREVENTED ME FROM GRANTING THAT MOTION WAS  
18      THAT IT WOULD HAVE FORCED A SEVERANCE OF MR. WILKES AND  
19      MR. FOGGO. WELL, IF IT TURNS OUT AS OF JANUARY THAT  
20      MR. WILKES IS IN CUSTODY, THEN THERE WON'T BE A SEVERANCE. HE  
21      CAN BE TRIED IN THE EASTERN DISTRICT OF VIRGINIA JUST AS WELL.

22          SO I'M GOING TO INVITE COUNSEL TO BRING A MOTION FOR  
23      RECONSIDERATION OF THAT MOTION TO TRANSFER. I'M INCLINED TO  
24      BELIEVE THAT IF MR. WILKES IS IN CUSTODY AND THERE IS NO RIGHT  
25      TO BE TRIED HERE IN THE SOUTHERN DISTRICT OF CALIFORNIA, THAT

1 THE CASE OUGHT TO BE APPROPRIATELY TRIED IN THE EASTERN  
2 DISTRICT OF VIRGINIA.

3 90 PERCENT OF THE WITNESSES, AS I CAN TELL, ARE IN  
4 THE EASTERN DISTRICT OF VIRGINIA. THE CASE AROSE THERE. MANY  
5 OF THE OPERATIVE ALLEGATIONS OCCURRED THERE. I'M NOT TRYING  
6 TO SHIRK RESPONSIBILITIES. I TRIED THE FIRST CASE. I'M  
7 PREPARED TO TRY MR. MICHAEL'S CASE, WHICH IS THE FOLLOW-UP  
8 CASE. BUT I THINK I SAID AT THE TIME BEFORE ANY OF THE CASES  
9 HAD BEEN TRIED BUT FOR THE FACT THAT IT WOULD HAVE FORCED THE  
10 SEVERANCE OF DEFENDANTS, IT SEEMED TO ME AN APPROPRIATE CASE  
11 TO TRANSFER TO THE EASTERN DISTRICT.

12 SO I'M INVITING, I GUESS, MR. MAC DOUGALL,  
13 MR. BUTLER, MR. CAHN, AND MR. HALPERN, GOVERNMENT COUNSEL,  
14 REBRIEFING ON THAT AND RECONSIDERATION. BUT I'M SERIOUSLY  
15 CONSIDERING DOING THAT IF IT TURNS OUT MR. WILKES IS IN  
16 CUSTODY.

17 SO THAT BEING THE CASE, MAYBE WE'RE A LITTLE  
18 PREMATURE TO TALK ABOUT SCHEDULING FURTHER DATES HERE.

19 ANY THOUGHTS OR COMMENTS?

20 MR. CAHN: WELL, A COUPLE OF QUICK COMMENTS. I'M  
21 NOT SURE HOW RELEVANT THEY ARE TO WHAT YOUR CONSIDERATIONS  
22 ARE.

23 I WILL ADVISE THE COURT THAT WE HAVE DISCUSSED THE  
24 MATTER WITH MR. MAC DOUGALL AND MR. BUTLER AT SOME LENGTH. IT  
25 HAD BEEN OUR INTENTION TO WITHDRAW MR. WILKES'S OBJECTION TO A



1       TRANSFER OF THE CASE TO THE EASTERN DISTRICT OF VIRGINIA. I  
2       HAD NOT UNDERSTOOD THAT THE COURT WOULD TRANSFER THE ENTIRE  
3       CASE. I HAD ASSUMED THAT IT WOULD BE SIMPLY A MATTER OF  
4       TRYING THE CASE THERE. I'M NOT SURE THAT CHANGES ANYTHING  
5       WITH REGARD TO MR. WILKES'S POSITION OR WHERE IS THE  
6       APPROPRIATE PLACE TO TRY THE CASE.

7               THE COURT: HOW WOULD THAT WORK, THOUGH? IF I WERE  
8       THE TRIAL JUDGE ON THE CASE, I THINK I'D WANT TO MONITOR THE  
9       PRE-TRIAL ACTIVITIES AND PARTICULARLY THE DISCOVERY. IF THE  
10      CASE WAS GIVEN OVER TO ME, MR. CAHN, I WOULDN'T WANT TO BE  
11      STUCK WITH SOMEONE ELSE'S RULINGS ON WHAT WAS RELEVANT AND  
12      WHAT'S NOT.

13             MR. CAHN: NO. I ASSUME THE COURT WOULD HANDLE ALL  
14      THOSE MATTERS AS THOUGH -- PART OF THE REASON WE WERE JOINING  
15      WOULD BE ON THE BASIS OF THE PRE-TRIAL PUBLICITY, INCLUDING  
16      THE PUBLICITY THAT TOOK PLACE DURING THE COURSE OF THE TRIAL  
17      THAT YOU JUST PRESIDED OVER. SO I HAD ASSUMED THAT THE COURT  
18      WOULD HANDLE IT IN THE SAME MANNER AS ANOTHER CASE THAT WAS  
19      TRANSFERRED FOR PURPOSES OF ADVERSE PUBLICITY, HANDLING ALL  
20      THE PRE-TRIAL MATTERS HERE AND THEN WE'D SIMPLY MOVE  
21      EVERYTHING TO WASHINGTON OR VIRGINIA FOR ACTUAL TRIAL OF THE  
22      CASE. OBVIOUSLY, I'M NOT A JUDICIAL OFFICER. I'VE GOT FAR  
23      LESS EXPERIENCE WITH THE ISSUE OF ACTUALLY DEALING WITH THE  
24      MOVING OF CASES ACROSS DISTRICTS.

25             THE COURT: TELL ME WHAT YOU CONTEMPLATED, THAT ALL

1 OF US WOULD GO WITH THE CASE AND WE'D JUST MOVE THE VENUE OF  
2 THE CASE?

3 MR. CAHN: I ASSUME IT'S NOT GOING TO BE A LONG  
4 CASE, A FEW WEEKS, AND THAT WE'D SIMPLY MOVE AND TRY THE CASE  
5 THERE FOR VENUE PURPOSES.

6 THE COURT: WHEN THE MOTION WAS BROUGHT, MY  
7 UNDERSTANDING WAS THEY WANTED ME TO SEND IT LOCK, STOCK, AND  
8 BARREL TO EASTERN DISTRICT OF VIRGINIA. THAT WAS PART OF THE  
9 PITCH, THAT THEY'RE USED TO HANDLING MATTERS LIKE THIS. THEY  
10 HAVE A NUMBER OF CASES THAT INVOLVE THE CLASSIFIED INFORMATION  
11 PROTECTION ACT AND THAT THE JUDGES THERE ARE FAMILIAR WITH  
12 THAT. ALL OF THAT IMPLIED TO ME IT WOULD GO TO A DIFFERENT  
13 JUDGE.

14 MR. CAHN: PERHAPS WE CAN HAVE SOME CHANCE TO TALK  
15 ABOUT THIS FURTHER, DO A LITTLE BIT OF RESEARCH ON THE WAY  
16 THESE MATTERS ARE USUALLY HANDLED AND POSSIBLY PRESENT  
17 SOMETHING TO THE COURT ON DECEMBER 11TH.

18 THE COURT: OKAY.

19 MR. HALPERN: THAT WOULD BE FINE WITH THE  
20 GOVERNMENT. I WAS UNDER THE SAME IMPRESSION THE COURT WAS,  
21 YOUR HONOR, IN TERMS OF THE ADVISABILITY IN TERMS OF SENDING  
22 THE CASE OUT, IF WE NEED TO DO IT WHOLE OR NOT AT ALL. IT  
23 APPEARS WHAT DEFENSE COUNSEL IS SUGGESTING IS NOT A FISH NOR  
24 FOWL IN THIS AREA. PERHAPS WE'RE ONLY GETTING THE WORST OF  
25 ALL WORLDS THEN, ESPECIALLY IN TERMS OF SENDING OUT AN ENTIRE

1 PROSECUTION TEAM AND ALL OUR AGENTS AS OPPOSED TO JUST SENDING  
2 EVERYTHING OUT AND LETTING THEM HANDLE IT FROM THIS POINT ON.  
3 IN TERMS OF SECTIONS 5 AND 6, WHICH IS THE MEAT OF THIS, WE  
4 HAVEN'T EVEN EMBARKED ON THAT. WE'RE STILL IN THE DISCOVERY  
5 STAGE.

6 THE COURT: THAT'S THE PART THAT CONCERNS ME.  
7 I'M WILLING TO BE PERSUADED THAT THIS IS THE WRONG VIEW. BUT  
8 THOSE DETERMINATIONS CALL UPON ME TO SAY "YES, I DO THINK THIS  
9 IS RELEVANT TO THE DEFENSE" AND SANITIZE THE INFORMATION OR  
10 COME UP WITH SOME MECHANISM OR "NO, I DON'T THINK THEY'RE  
11 RELEVANT, AND THE CLASSIFIED NATURE IS GOING TO TRUMP YOUR  
12 PERCEIVED NEED TO PUT THAT INFORMATION ON."

13 THOSE ARE PECULIAR JUDGMENTS THAT SOMEONE TRYING THE  
14 CASE OUGHT TO MAKE. IF THE CASE WERE HANDED OVER TO ME AND I  
15 WAS STUCK WITH THOSE JUDGMENTS MADE BY SOMEBODY ELSE, I'M NOT  
16 SURE I'D BE VERY COMFORTABLE WITH THAT.

17 I HAVEN'T BEEN HERE AND DONE THAT BEFORE EITHER,  
18 MR. CAHN. SO IF YOU CAN PERSUADE ME THAT IT'S INDICATED THAT  
19 I SHOULD MAKE THOSE DECISIONS AND THEN SEND THE WHOLE THING OR  
20 PERHAPS TRAVEL WITH THE CASE, I'LL CERTAINLY BE WILLING TO  
21 CONSIDER THAT. I DON'T KNOW WHAT WOULD BECOME OF THE CALENDAR  
22 HERE. WE'RE VERY, VERY BUSY.

23 SO MY THOUGHT IS THAT BEFORE WE DO A LOT OF  
24 PREPARATION ABOUT SETTING SECTION 5 DATES, THAT MAYBE WE OUGHT  
25 TO DISCUSS THAT. DECEMBER 11TH IS NOW SET FOR THE HEARING ON

1 THE ALLEGED GRAND JURY LEAKS. IT MIGHT BE WELL IF THAT  
2 HEARING HAS BEEN COMPLETED BEFORE WE REVISIT THIS ISSUE. SO  
3 IF IT'S NOT A PROBLEM THAT CREATES A CONFLICT FOR SOMEBODY  
4 WITH HOLIDAY PLANS, PERHAPS WE OUGHT TO PUT THE NEXT  
5 CONFERENCE IN WILKES/FOGGO OVER FOR THE WEEK AFTER,  
6 DECEMBER 18TH, FOR EXAMPLE. BY THEN I ASSUME THE HEARING WILL  
7 HAVE TAKEN PLACE AND WE'LL HAVE SOME RESULT FROM THE HEARING  
8 THAT I DEFERRED AND I'VE REFERRED TO ALREADY.

9 MR. CAHN: 9:00?

10 THE COURT: YES, 9:00.

11 MR. MAC DOUGALL, WELCOME.

12 MR. MAC DOUGALL: THANK YOU. I APOLOGIZE FOR BEING  
13 LATE. WE HAD GOTTEN A MESSAGE THAT THE HEARING WAS BEING  
14 DEFERRED FOR A FEW MINUTES.

15 THE COURT: IS THAT AGREEABLE TO YOU, IF WE PUT THIS  
16 OFF? MY INTENTION WOULD BE TO CONDUCT IT THE SAME WAY. THOSE  
17 THAT ARE HERE IN SAN DIEGO COULD ATTEND IN PERSON, AND YOU AND  
18 YOUR PARTNERS CAN ATTEND BY TELEPHONE.

19 MR. MAC DOUGALL: THANK YOU. WE MAY ACTUALLY BE  
20 THERE FOR THAT GIVEN WHAT'S LIKELY TO BE ON THE DOCKET. YOU  
21 HAD ONCE THREATENED US WITH A TRIAL AT CHRISTMAS, SO A HEARING  
22 AT CHRISTMAS WILL BE EASY.

23 THE COURT: WELL, LET ME DO THIS, THEN: I INVITE  
24 ANY FURTHER BRIEFING ON THE ISSUE OF WHETHER THE TRANSFER OF  
25 THE CASE TO THE EASTERN DISTRICT OF VIRGINIA SHOULD BE

1 RECONSIDERED AT THIS POINT GIVEN THE CHANGE OF CIRCUMSTANCES  
2 SINCE THE TIME I INITIALLY RULED ON THAT. AND IF I'M  
3 PERSUADED THAT IT OUGHT TO BE, THEN I THINK THAT THESE MATTERS  
4 OUGHT TO BE HANDLED BY THE ASSIGNED TRIAL JUDGE.

5 MR. CAHN, I'LL LOOK IN PARTICULAR FOR YOUR BRIEFING  
6 ON WHETHER I SHOULD STAY WITH THE CASE OR WHETHER THAT'S THE  
7 NORMAL PRACTICE OR WHETHER THE CASE JUST GOES AND A NEW JUDGE  
8 IS ASSIGNED. AND WE CAN GO FROM THERE IN SETTING APPROPRIATE  
9 DATES FOR THE RESOLUTION OF DISPUTED DISCOVERY ISSUES.

10 AGREEABLE?

11 MR. CAHN: YES, YOUR HONOR.

12 THE COURT: IS THAT AGREEABLE, MR. MAC DOUGALL, ON  
13 BEHALF OF MR. FOGGO?

14 MR. MAC DOUGALL: YES.

15 THE COURT: ON BEHALF OF THE UNITED STATES,  
16 MR. HALPERN?

17 MR. HALPERN: YES.

18 THE COURT: DECEMBER 18TH AT 9:00. I APOLOGIZE FOR  
19 THE DELAY THIS MORNING.

20 MR. MAC DOUGALL: THANK YOU, YOUR HONOR.

21 MR. HALPERN: THANK YOU, YOUR HONOR.

22 --000--  
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3 I HEREBY CERTIFY THAT THE TESTIMONY  
4 ADDUCED IN THE FOREGOING MATTER IS  
5 A TRUE RECORD OF SAID PROCEEDINGS.  
6

7 S/EVA OEMICK 4-24-08

8 EVA OEMICK DATE  
9 OFFICIAL COURT REPORTER  
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